

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CYNTHIA A. SCHWARZ and HANK SCHWARZ,

Plaintiffs,

HEALTH CARE SERVICE CORPORATION
ILLINOIS STATE PAC, NFP

Involuntary Plaintiff,

v.

Case No. 09-CV-668

MIDWEST AIRLINES, INC.,
ILLINOIS NATIONAL INSURANCE COMPANY,
UNKNOWN, sued as "ABC" a fictitious entity, and
DEF INSURANCE COMPANY

Defendants.

ORDER

On July 8, 2009, plaintiffs filed a Complaint alleging plaintiff Cynthia Schwarz suffered personal injury on a Midwest Airlines' flight during its landing in Milwaukee. Hank Schwarz, her husband, alleged various damages stemming from his wife's injuries. Plaintiffs brought suit against: 1) Midwest Airlines, Inc., the operator of the plane on which the injury occurred; 2) Illinois National Insurance Company, presumably the insurer for Midwest (though that is not stated in the pleadings); 3) ABC, a fictitious name for an unknown entity believed to be responsible for the maintenance of the plane on which the injury occurred; and 4) DEF Insurance Company, a fictitious name for an unknown insurer for ABC.

Plaintiffs originally asserted that the court had jurisdiction pursuant to 28 U.S.C. § 1332, diversity jurisdiction. However, in an Order dated July 23, 2009, the court pointed out that complete diversity was lacking, and thus granted plaintiffs an opportunity to amend their complaint so as to properly allege jurisdiction. Instead of dropping the non-diverse parties from the suit, plaintiff chose to allege federal question jurisdiction by asserting that the claims arose under the Federal Aviation Act. In an Order dated August 26, 2009, the court pointed out that it was not aware of any private right of action under the Federal Aviation Act, and thus ordered plaintiffs to show cause as to why the action should not be dismissed for lack of subject matter jurisdiction. After entry of this order, defendant Midwest filed an Answer to plaintiffs Amended Complaint. Thereafter, involuntary plaintiff Health Care Service filed an Answer containing cross-claims against plaintiff Cynthia Schwarz, and counter-claims against defendants. No basis for federal jurisdiction was alleged for Health Care Service's claims. On September 4, 2009, plaintiffs filed a proposed order, seeking that this action, including all cross-claims and counterclaims be dismissed without prejudice and without costs.

Upon consideration of plaintiffs' filing in response to the court's August 26, 2009 Order, it is clear that dismissal is appropriate.

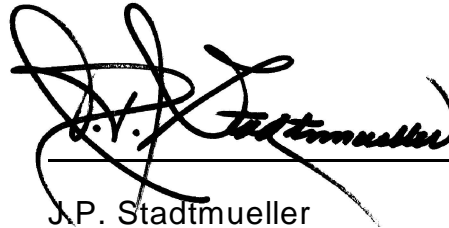
Accordingly,

IT IS ORDERED that the above-entitled action, and all cross-claims and counterclaims, be and the same hereby are **DISMISSED**, without prejudice or costs, for lack of subject matter jurisdiction.

The clerk is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 16th day of September, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller
U.S. District Judge